IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Crl.MC.No. 11657 of 2002()

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CC.151/2002 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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PETITIONER: ACCUSED:

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P.U. GOPIRAJ, S/O. UNNIKRISHNAN,
DENTAL SURGEON, DENTAL AND DENTAL CLINIC,
PLAZA TOWERES, THRISSUR,
RESIDING AT RAMAVARMAPURAM,
VILVATTOM VILLAGE, THRISSUR.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS: COMPLAINANT:

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1. THE STATE OF KERALA (SUB INSPECTOR OF POLICE, THRISSUR TOWN EAST POLICE STATION, CIRME NO.438/2001) REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
2. ADDL. R2: ANTONY LOUIS, 2/A/103, HEMA PARK BHANDUP (B), MUMBAI - 400042

   R2 IMPLEADED AS ADDL. 2ND RESPONDENT AS PER ORDER DATED 13-7-2005 IN CRL.M.A. 7317/05.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V.RAMKUMAR, J.**

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Crl.M.C.No. 11657/2002

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Dated this 19th day of June, 2007

**O R D E R**

In this petition filed under Section 482 Cr.P.C, the petitioner who is the accused in C.C.No.151/2002 on the file of the C.J.M, Thrissur, seeks to quash the criminal prosecution initiated against the petitioner culminating in the cognisance taken by the C.J.M, Thrissur.

2. The case originated on Anexure-II complaint, lodged by the second respondent herein. Even though the second respondent was duly served, he has not chosen to enter appearance.

3. The gravamen of the complaint lodged by the second respondent herein before the Thrissur Town East police station is the following:-

The complainant namely C.Antony Louis is a freelance journalist and consultant in various matters such as bounced cheque, excess electricity bills, consumer court & criminal court matters, criminal defamation, lodging FIR with police, the Maharashtra State Ownership Flats Acts. The accused, who is not a qualified dentist, is

practicing without a proper licence and he, along with his lady assistant, inserted their bare hands and fingers in the mouth of the complainant's daughter Miss.Antoinettay Louis, while filling five cavities in three of her teeth, thereby endangering her life. The accused and his lady assistant have practiced fraud, breech of trust etc.

4. Upon receipt of Annexure-II complaint, the police registered crime No.438/2001 against the petitioner for an offence punishable under Section 420 IPC. The petitioner was, thereafter, charge sheeted for the offence of cheating punishable under Section 420 IPC on the allegation that at about 2.30 p.m on 11.5.2001, even though the petitioner made the complainant's daughter believe that all the five cavities were filled and obtained from her a sum of Rupees One Thousand at the rate of Rs.200/- per cavity, he had in fact filled only two cavities and the petitioner thereby committed the offence of cheating.

5. The Court below took cognisance of the said

offence and took the case on file as C.C.No.151/2002. It is at this juncture that the petitioner has preferred this Crl.M.C.

6. I have gone through Annexure-II complaint wherein it is unambiguously admitted that when the complainant met the petitioner and complained to him about the unprofessional manner in which his daughter was attended to using bare hands and fingers while undertaking the filling operations, the petitioner offered to return the payment of Rupees One Thousand paid to him. Even assuming that the petitioner had induced the complainant or his daughter to part with the said amount and perform the operation without the requisite skill, his own admission is to the effect that the petitioner offered to return the money back. From the above admission itself, it is clear that there was no offence of cheating made out. The final report filed by the police would come out with a new case which even the complainant had not voiced in Annexure-II complaint. In Annexure-II complaint, he has no case that out of the

five cavities two alone were filled. But that is precisely the case put forward in Annexure-I, final report. There was absolutely no basis for the Magistrate to take cognisance of the offence alleged in the report and the same is hereby quashed. It will be an abuse of the process of Court to allow the proceedings to continue before the Court below. Hence, the proceedings initiated as C.C.No.151/2002 on the file of the C.J.M, Thrissur, are hereby quashed.

This Crl.M.C is allowed as above.

**V.RAMKUMAR,**
**JUDGE**

mrcs